



**THE WISCONSIN COURT
INTERPRETERS HANDBOOK**

***A GUIDE FOR JUDGES, COURT COMMISSIONERS, ATTORNEYS,
INTERPRETERS AND OTHER COURT USERS***

This handbook was developed and approved by the Records Management Committee of the Wisconsin Court System in 1998 and revised by the Court Interpreter Program in 2004. It is made available by the Director of State Courts Office. This handbook is intended to assist the courts and public in providing fundamental fairness to all litigants. For further information about the court interpreter program, contact the Office of Court Operations, 110 East Main Street, Suite 410, Madison, Wisconsin 53703, or call (608)-266-8635. For a detailed description of the Court Interpreter Program go to our website: www.wicourts.gov/circuit/courtinterpreter.htm

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INTRODUCTION

Fundamental fairness in court proceedings requires that every participant is able to understand and communicate effectively. A paramount concern for judges, attorneys, and others taking part in legal actions should be that no person is denied the ability to communicate in court. Judges and attorneys are familiar with the requirement that defendants in the criminal justice system be informed of their rights. That same standard of advisement and understanding should prevail when evaluating whether interpreter services are necessary. Skilled interpretation and translation enable courts to accurately gather all the facts and make informed decisions. By making certain that all participants understand what is happening to them in court, it is ensured that court processes remain understandable and accessible.

Wisconsin case law and statutory provisions affirm the importance of accommodating litigants who need an interpreter to communicate effectively. Our system of due process justice requires clear and effective communication. It is the responsibility of the court system and the state bar to ensure that qualified interpreters are used.

This handbook serves as a directory and reference guide. It is intended to be used when the court, attorneys or others are made aware of the need for interpreter services. The controlling principle found throughout this handbook is that every litigant should be afforded the opportunity to understand and participate in the court process.

WHAT IS THE ROLE OF A COURT INTERPRETER?

For courts, interpreting is the unbiased oral translation of testimony, documents, instructions, rulings of the court and arguments of attorneys, by a qualified neutral interpreter, so that a court or jury might correctly determine the facts of the case at hand.

WHO QUALIFIES FOR AN INTERPRETER?

Wisconsin law relating to interpreters was last modified in 2001 when the legislature enacted changes relating to foreign language interpreters (see §§ 885.37 and 885.38, Wis. Stats.).

Generally, an individual qualifies for an interpreter if:

- The individual is charged with a crime.
- The individual child or parent is subject to juvenile court jurisdiction.
- The individual is subject to a mental or alcoholic commitment.
- The person is a witness in any of the above.

Additionally, the trial judge may authorize the use of an interpreter for persons who are not parties to the action but who have a substantial interest in the proceeding and in the judge's view, should be assisted by an interpreter (§ 885.37(1), (2), and (3m), Wis. Stats.).

In each proceeding when a court has notice that an individual has Limited English Proficiency (LEP), the court shall make a factual determination as to whether or not the impairment is sufficient to require the use of an interpreter. The judge must determine whether the LEP is sufficient to prevent the individual from communicating with his or her attorney, reasonably understanding testimony in English or reasonably being understood in English (see § 885.38, Wis. Stats.).

Under the Americans with Disabilities Act (ADA) any deaf or hard-of-hearing participant or spectator in a court proceeding shall be supplied with the necessary technical accommodations or sign interpreter at no cost to him or her.

When the services of an interpreter are required, the judge shall advise the person of his/her right to an interpreter and that, if he/she cannot afford one, an interpreter will be provided at public expense. Only an individual in need of interpreting services may waive the right to have an interpreter present. This right may be waived only in open court and on the record (§ 885.38(4)(a) Wis. Stats.).

When the services of an interpreter are required, the court shall qualify the interpreter as to experience, training, credentials and skill. When an individual who qualifies for an interpreter is deaf or hard-of-hearing, the court shall, if possible, appoint a certified interpreter from a list maintained by the Wisconsin Department of Health and Family Service's Office of the Deaf and Hard of Hearing. If no listed interpreter is available or able to interpret, the court shall appoint an interpreter who is able to accurately communicate with the deaf or hard-of-hearing person (§ 885.37(5)(b) Wis. Stats.).

PRIVILEGED COMMUNICATION

If an interpreter is used to aid communication that is privileged by statute, Supreme Court rule or the U.S. or state constitution, an interpreter may be prevented from disclosing the communication by any person who has a right to claim the privilege (§ 905.015, Wis. Stats.).

FINDING, SCHEDULING AND QUALIFYING COURT INTERPRETERS

This portion of the handbook explains locating, scheduling and qualifying interpreters used to provide court interpretation services.

Judges' Checklist: To assist judges in managing interpreter services, the following points are offered.

- Identify the need and appoint a qualified interpreter as early in the process as possible.
- At the first hearing, ask the interpreter about training, credentials, skills and experience. Repeat the process if the interpreter changes.
- Conduct a preparatory meeting with the interpreter prior to the hearing to allow the interpreter to clarify interpretive ground rules or conditions (i.e., extra time necessary for a deaf person to view exhibits and observe signing, function of a second interpreter, etc.)
- As the court event begins, advise the interpreter, the recipient of the interpreting services, witnesses and attorneys of the proper procedure to be used:
 - ⇒ Speak in the first person;
 - ⇒ No inappropriate separate communication between the interpreter and the recipient of the interpreting service;
 - ⇒ Judge is responsible for responding to requests for repetition or rephrasing and will instruct participants accordingly
 - ⇒ Caution participants about speed and clarity of speech.
- Arrange sight lines and sound systems in the courtroom to facilitate interpretation.

- Administer an oath or affirmation to the interpreter at the beginning of every hearing relating to his/her commitment to make a true translation. Interpreters need to be under oath for the entire proceeding to ensure a legitimate and accurate translation of what is taking place during the entire proceeding since they are interpreting for the individual even those conversations they are not directly involved in.
- Observe the interpreter's practice and correct any deviations from proper standards of conduct. If problems become apparent, use a sidebar conference with attorneys and interpreter, or a recess, to address and correct.
- Provide rest breaks for the interpreter or appoint multiple interpreters for lengthy proceedings.

Interpreter's Checklist: Just as interpreters expect understanding of and respect for their role in the proceedings, the court expects interpreters to follow certain practices.

- Arrive at the designated location early and check-in with the appropriate person (judge, clerk or bailiff).
- Orient yourself to the nature of the case by reviewing the file.
- Review all documents that will be translated during the hearing.
- Meet with attorneys and their client. Explain to the attorney what is being said, and in the presence of the attorney, speak with the client to confirm the ability to communicate and to explain the neutral role of an interpreter. Identify regionalisms, slang or technical language that may be used in the proceeding.
- Be prepared to interrupt proceedings if necessary to ask the judge for permission to have questions or answers repeated, use a dictionary or other aid, etc.
- Know and follow the code of interpreting ethics and professional standards of conduct.

FINDING A COURT INTERPRETER

When an individual appears before a judge and does not speak, and/or hear, or understand the spoken English language, an interpreter is required to assure that rights are protected and court hearings are expedited. It is incumbent upon the participants (judges, attorneys and court staff) to be aware of situations that may require the use of an interpreter.

Judges should avoid conducting court hearings without the presence of a qualified court interpreter. It is inappropriate to use an individual who is a family member, a representative of a law enforcement agency, or a spectator as a court interpreter. In certain emergencies or when the need for an interpreter was not known (at a first appearance, for example) it may be necessary to use a friend, law officer, etc., to facilitate the proceeding or fulfill a statutory obligation. If possible, the proceeding should be adjourned and rescheduled when a qualified interpreter is available.

Roster

The Director of State Courts maintains a roster of interpreters who have attended the court's orientation training and who have passed the English proficiency portion of the written test. The roster lists contact information for interpreters in 14 different languages, including American Sign Language, along with the judicial districts where they are available to work. This roster is viewable on the Internet at www.wicourts.gov/circuit/CourtInterpreterRoster.htm

Other Resources

There is information in the resource section of this handbook to assist courts in locating qualified court interpreters. District Court Administrators and the Office of Deaf and Hard of Hearing maintain a list of potential court interpreters.

SCHEDULING A COURT INTERPRETER

The appropriate time for the court to schedule a case involving a court interpreter is after the court has located a qualified interpreter.

A qualified court interpreter is a professional whose time should be scheduled just like expert witnesses coming before the court. As communication technologies advance it may become easier to hold court with attorneys, clients, judges and interpreters working from remote locations.

The court should seek to secure the services of an interpreter with the highest level of certification and training.

QUALIFYING A COURT INTERPRETER

Under Wisconsin law, courts are required to qualify interpreters as an expert. Following this procedure ensures the protection of the court record on appeal. The following list of questions may be used in the voir dire examination of a potential court interpreter.

VoirDire Examination Questions

1. What is your native language? How did you learn English/the other language? How long have you been speaking it?
2. Please describe your formal schooling.
3. Do you have any formal training in interpreting? In legal or court interpreting?
4. Please describe your experience as an interpreter. Have you ever interpreted in court before? What kind of proceeding?
5. Are you certified as a court interpreter in Wisconsin or any state or federal court? Do you have any other accreditation for interpretation or translation?
6. Have you spoken with the person who needs interpreting, or do you need a few minutes now to talk? Are you familiar with the dialect he/she speaks? Are you able to understand him/her and communicate with him/her?
7. Do you know any of the parties, witnesses, or attorneys? Are you aware of any conflict of interest that you might have in this case?

8. Describe what it means to interpret simultaneously and consecutively. Are you able to do so? Do you understand that you must interpret everything said on the record?
9. Do you need time to review any documents in this case?
10. Have you read the Code of Ethics for Court Interpreters in the Wisconsin Courts? Do you understand it and agree to abide by it?

Certified Court Interpreters

The Director's Office has implemented a certification process that includes the following requirements:

- Attend an orientation training session offered by the court
- Pass a written examination covering English proficiency, ethics, legal terminology and procedure, and translation
- Pass an oral certification exam designed by the National Center for State Courts (NCSC) Consortium for State Court Interpreter Certification
- Sign an oath to abide by the code of ethics for court interpreters
- Meet character and fitness requirements (including a criminal background check)
- Keep a current address on file

Judges, attorneys, clerks and other agencies should use certified court interpreters as their first choice for legal work, when available.

Courts may consider the following levels of certification to be sufficient for qualification purposes for interpreters for deaf or hard-of-hearing people. They are presented in order of preference with the highest skill level being listed first.

- Holds the Specialist Certificate Legal (SC:L) or Conditional Legal Interpreting Permit (CLIP).
- Certificate of Interpretation (CI) and Certificate of Transliteration (CT), or Comprehensive Skills Certificate (CSC). (**NOTE:** Legal training is extremely important. These individuals should at a minimum have received some legal training).
- Any certification granted by a nationally recognized testing entity.

Reciprocity

The Director of State Courts also grants reciprocity to interpreters who have taken and passed the National Center for State Courts (NCSC) certification exams from other state courts and the federal exam.

Other Qualifications

In addition to interpreters who are certified by the Director of State Courts Office, courts may also consider the following levels of certification to be sufficient for qualifying foreign language interpreters.

- Graduates of a foreign language certification program from an accredited university or college or,
- Interpreters certified by the Director of the Administrative Office of the United States Court or,

- Individuals with adequate prior experience as a court interpreter or otherwise possessing the necessary expertise.

PAYING COURT INTERPRETERS

Fiscal concerns are secondary to fundamental fairness when determining how much an interpreter will be paid. Interpreters are paid by the respective counties, which in turn, may be reimbursed by the State if a determination of indigency has been made. The maximum reimbursement rate to the counties is \$40 for the first hour and \$20 for each additional ½ hour for using certified interpreters and \$30.00 for the first hour and \$15 for each additional ½ hour for other qualified interpreters (§758.19(8)(a), Wis. Stats.). Counties may only seek reimbursement at that amount from the state (§814.67(1)(b)(2), Wis. Stats.). Judges may order the county to pay interpreters at a rate higher than the reimbursable amount. The lack of an eligible reimbursement does not reduce the court's obligations to provide an interpreter.

Due process and an accurate record of proceedings can only be obtained when understandable communication takes place. By locating, qualifying, and carefully scheduling professional interpreters courts can contain costs. The press of the court's business is but one factor that a judge should take into account when scheduling a case requiring an interpreter.

OBLIGATION TO COMPLY WITH ADA: COURT HEARINGS FOR THE DEAF OR HARD-OF-HEARING

The courts are obligated to comply with the Americans with Disabilities Act (ADA). Deaf or hard-of-hearing persons are to be given deference in the choice of auxiliary aids that are used to achieve effective communication (28 C.F.R. 35.160). The Wisconsin Records Management Committee has developed Form GF-153 that is designed to assist the court in determining what accommodations a court user might need. This accommodation includes the need for an interpreter if a person is deaf or hard-of-hearing.

Attorneys should contact the clerk of court when they represent a client who is deaf or hard-of-hearing. In cases where special skills are required, advance notice can expedite the process of locating and making arrangements for a qualified interpreter to be present. For example, in cases where a deaf individual uses a foreign sign language, has minimal or limited communication skills, uses signs unique to a given region, ethnic or age group or is deaf-blind; it may be advisable to use a deaf interpreter in tandem with an American Sign Language (ASL) interpreter.

It is appropriate for the judge to determine and balance the need for a case to proceed with the need for and skill level of the interpreter, as long as communication can take place.

SUGGESTIONS FOR CASES INVOLVING DEAF OR HARD-OF-HEARING PEOPLE

- **SPEAK DIRECTLY TO THE DEAF OR HARD OF HEARING PERSON.**

It is important from the deaf or hard-of-hearing person's point of view that the court and lawyers talk directly to the deaf or hard-of-hearing person. The deaf or hard-of-hearing person can quickly sense your indifference or your discomfort if you face only the interpreter and talk only to the interpreter. When talking to a deaf or hard-of-hearing person, speak directly to the person's face. Speak naturally, without shouting or distorting your normal mouth movements.

- NO LANGUAGE CAN ACCOMMODATE A LITERAL WORD-FOR-WORD ENGLISH TRANSLATION. ALLOW FLEXIBILITY IN INTERPRETATION.

A deaf or hard-of-hearing person may become confused by a word-for-word translation. There are both American Sign Language (ASL) and signed English commonly in use and both these languages differ from spoken English. The interpreter should inform the deaf or hard-of-hearing person's lawyer of the language and mode used by the client so that the lawyer can inform the court of any problem and the possible need to explain in more detail.

Confusion can also result when a deaf or hard-of-hearing person nods "yes" to an interpreter's question but still has a quizzical look. "Yes" may not be the answer to the question, but only an indication that the person understands the question. A deaf or hard-of-hearing person may even nod "yes" without completely understanding. Repeating part of a question is often the deaf or hard-of-hearing person's attempt to clarify it and it does not necessarily mean confirmation or agreement. With the judge's approval there may be an occasional need to ask leading questions.

- SPEAK AS YOU NORMALLY WOULD.

Speak naturally, but not too fast. Remember that names and some other words must be fingerspelled, and this takes more time than signing. Although these proceedings may take longer they are otherwise identical to other court proceedings; speak at a normal rate.

It must be realized that a deaf or hard-of-hearing person can concentrate on only one person at a time. It is just as impossible for an interpreter to interpret for two people simultaneously as it would be for a court reporter to accurately take that testimony.

- MAKE SURE THE DEAF OR HARD OF HEARING PERSON "SEES" THE COMMUNICATION.

All deaf or hard-of-hearing people rely on information they see. To be effective, communication must be visible. The court should make every attempt to facilitate a good visual contact between the deaf or hard-of-hearing person, the interpreter and other participants. The court must make sure the deaf or hard-of-hearing person can watch the interpreter and then look at any visual evidence.

- BE AWARE OF ENVIRONMENTAL FACTORS.

Any time there is a deaf or hard-of-hearing person in court, be aware of environmental factors that may interfere with communication.

While a deaf person may or may not be affected by background noises, a great deal of background movement or changes in lighting will be distracting. A hard-of-hearing person who uses a hearing aid or who has residual hearing might be seriously distracted by background noises. Minimize machinery noises or other conversations.

- MATCH THE SKILLS OF THE INTERPRETER WITH THE NEEDS OF THE DEAF OR HARD-OF-HEARING PERSON.

A qualified sign language interpreter is necessary to achieve full and effective communication with a deaf or hard-of-hearing person in many situations. American Sign Language (ASL) is a visible language

linguistically independent from English. Many deaf people use sign language rather than English as their primary mode of communication.

There are many variations and combinations of sign language. Even professional interpreters cannot achieve effective communication all the time for all deaf or hard-of-hearing people who sign. Typically, deaf people with native use of ASL are more successful in communicating with persons who are highly visually oriented. Judges should consider the use of a deaf interpreter in combination with a hearing relay interpreter who is proficient in ASL. The use of a deaf interpreter may provide the greatest opportunity for the deaf client to have accurate linguistic and cultural access to the judicial system.

Avoid using family members or friends of deaf or hard-of-hearing people as interpreters. The interpreter should be a neutral professional who facilitates communication between the deaf or hard-of-hearing person and other participants in the proceedings. Professional certified interpreters follow a code of ethics requiring confidentiality and accuracy.

- THE INTERPRETER SHOULD BE PRESENT UNTIL EXCUSED BY THE COURT.

Pursuant to §885.37, Wis. Stats., interpretation of the whole proceeding is required when a deaf or hard-of-hearing person is a party to the action or a spectator as long as they remain present in court.

- PROVIDE REST PERIODS FOR INTERPRETERS.

Like court reporters, interpreters must hear everything said and must concentrate fully in order to do their job accurately. As a result, interpreters require rest periods for best performance. During lengthy proceedings of forty-five minutes or more, it may be necessary to use two interpreters. When two professional interpreters are present, usually one is actively interpreting while the other is monitoring the “on duty” interpreter. This helps to reduce fatigue and enhance accuracy.

- AVOID RELIANCE UPON WRITTEN NOTES AS THE MEANS OF COMMUNICATION UNLESS REQUESTED.

At times a deaf or hard-of-hearing person will use written notes to communicate or to supplement other modes of communication. Writing is not, however, always effective or appropriate. Technology is affecting this area as machine readable assistance is becoming available. Real-time court reporting may be beneficial and a number of court reporters are becoming certified in this area.

Some deaf or hard-of-hearing people are highly educated; they read and write well. Others do not. It is a common misconception that deaf or hard-of-hearing people compensate for their inability to hear by reading and writing. Many deaf or hard-of-hearing people, especially those who lost their hearing before they learned to talk, have difficulty with written as well as spoken English. They may be more comfortable communicating in American Sign Language.

- CALENDARING THE CASE WHEN AN INTERPRETER IS INVOLVED.

The interpreter is a professional. It is appropriate to view the arrangements for an interpreter as contractual in nature. It is improper to subpoena a person to act as an interpreter in order to avoid paying the interpreter appropriate compensation.

- LIP-READING

Another common misconception is that all deaf or hard-of-hearing people can read lips. In fact, very few can lip-read well enough to understand speech. The court and lawyers can help by repeating the thought using different words. Also, use gestures freely. The difference between “time” and “dime” is obvious when you point to your wristwatch. Do not inhibit natural gesture.

Lip-reading can only occur when the deaf or hard-of-hearing person can see the speaker. Lip-reading often supplements other modes of communication but is seldom sufficient to assure effective communication in a courtroom. Furthermore, lip-reading ability may decrease dramatically in stressful situations, like those encountered in the court environment. Persons with cochlear implants may prefer lip-reading. Some deaf people may require the use of an oral interpreter or real-time captioning. An oral interpreter faces the deaf person and silently mouths the spoken communication along with the speaker.

- DEAF SPEECH

Early deafness interferes with English language and speech acquisition. Nevertheless, some deaf or hard-of-hearing people have normal, intelligible speech. Others, however, do not speak at all or speak with unusual voice quality, inflections or modulations.

If you have difficulty understanding a deaf or hard-of-hearing person who wishes to speak, listen without interruption until you become accustomed to the voice patterns and rhythm. “Hearing-impaired”, “deaf-mute” and “deaf and dumb” are considered pejorative terms by most deaf or hard-of-hearing people.

- REAL TIME REPORTING OR REAL TIME CAPTIONING

Real Time Captioning (RTC) is an emerging accommodation choice that parallels the work of Court Reporters. It involves the use of individual(s) trained in real time reporting, steno machine, real time software and lap top computer as well as materials on a situational basis (i.e., projector). A trained captioner uses a steno machine that sends steno-entries to a real-time software that translates steno-entries into readable text on the lap top computer instantaneously at a near verbatim rate.

- DO NOT IGNORE THE NEEDS OF THOSE INDIVIDUALS WHO ARE HARD OF HEARING BUT WHO ARE NOT DEAF.

One in a hundred Americans are completely deaf but one in sixteen has a significant hearing loss. Environmental noise can interfere with the performance of hearing aids. There are devices available that can reduce levels of environmental noise. The court should direct participants to speak louder. The court should consider having the deaf or hard-of-hearing person repeat the question asked, before answering. It may be appropriate to rearrange the courtroom to facilitate communication for all participants. Assistive listening devices are available for installation in courtrooms and are required in new courtroom construction.

SUGGESTIONS FOR CASES INVOLVING PERSONS WHO SPEAK A FOREIGN LANGUAGE

Interpreters for foreign languages should expect to be qualified as experts. Prior to any scheduled hearing attorneys should contact the clerk of court when they represent a client who speaks a foreign language. In

cases when a rare, hard to accommodate language skill is required, additional advance notice can expedite the process of locating and making arrangements for a qualified interpreter to be present.

Clerks of court should work in conjunction with their district court administrators to maintain a comprehensive list of qualified foreign language interpreters in their district. Once alerted to the possible need for an interpreter, you need not simply rely on an attorney's representation regarding whether or not an interpreter is needed.

- VOIR DIRE THE DEFENDANT/WITNESS - DO NOT ASK IF THE PERSON SPEAKS ENGLISH. DO NOT ASK LEADING QUESTIONS; ASK NO QUESTIONS THAT CALL FOR YES/NO ANSWERS.

Consider the following questions. Explain that you are asking these questions to evaluate an interpreter.

- ⇒ Please state your name and address.
- ⇒ Please tell us your birthday, your age, and how many children there were in your family.
- ⇒ Please tell us whether you are employed, and if you are employed, describe the kind of work that you do.
- ⇒ Describe your education. What language do you read and write?
- ⇒ Describe the courtroom.
- ⇒ Describe with whom and how frequently you speak English.
- ⇒ Tell me a little about how comfortable you feel speaking English.

- EVALUATE THE NEED FOR AN INTERPRETER IN LIGHT OF THE PROCEEDING.

It is entirely appropriate to evaluate the need for an interpreter, and the language skills of the interpreter, in light of the complexity of the proceedings. Rudimentary language skills may suffice when simply scheduling a hearing, while the most sophisticated skills are required for persons interpreting live testimony.

- REMEMBER, IN ORDER FOR NON-ENGLISH SPEAKING DEFENDANTS TO TESTIFY IN THEIR OWN DEFENSE THEY MUST BE ABLE TO:
 - ⇒ accurately and completely describe persons, places, situations, events;
 - ⇒ tell "what happened" over time;
 - ⇒ request clarifications when questions are vague or misleading.

The judge and attorneys should speak directly to the person (not to the interpreter). Interpretation should be literal; or as close to verbatim as makes sense (i.e. slang or idioms).

- INTERPRETATION SHOULD BE IN THE FIRST PERSON.

Incorrect		Correct	
Q.	When the accident happened were you awake?	Q.	When the accident happened were you awake?
<u>Interpreter</u>			

A. The witness says he was awake.

A. Yes.

Attorney

Q. Ask him what he saw at that time.

Q. What did you see at the time?

Interpreter

A. He saw the other car coming fast.

A. I saw the other car coming fast.

The judge should stop third person renditions and instruct the participants to use 1st person renditions.

Some other points to consider:

- Court interpreting is conditioned by the formal environment of the courtroom and the adversary proceedings. Be sensitive to this. The interpreter acts as his or her own sound engineer. Visibility helps to foster effective communication in this type of environment. As with interpretation for the deaf or hard-of-hearing, the court should allow flexibility in physical arrangements of furniture and people to enhance communication.
- Qualified interpreters are hard to find. Use your judicial district's Court Interpreter Resource List (contact your district court administrator) when an interpreter is needed or consult the Interpreter Roster. A skilled interpreter should be familiar with legal terminology and court interpreting procedures.
- It may be necessary to adjourn a hearing in order to obtain the services of an interpreter. Do not use family members or friends of the defendant or witness as an interpreter. The interpreter should be a neutral professional, skilled in the techniques of interpretation.
- Court interpreters need breaks or rest periods in order to function effectively.

CODE OF ETHICS FOR COURT INTERPRETERS

63.001 Citation of rules; definitions. (1) SCR 63.001 to 63.10 may be cited as the "Code of Ethics for Court Interpreters."

(2) In this chapter "code" means the Code of Ethics for Court Interpreters.

(3) "Shall" is used in the code to define principles to which adherence is required.

63.002 Preamble. Many persons are partially or completely excluded from participation in court proceedings due to limited proficiency in the English language, as described in §§ 885.37 (1) (b) and 885.38 (1) (b), stats. Communication barriers must be removed as much as is reasonably possible so that these persons may enjoy equal access to justice. Qualified interpreters are highly skilled professionals who help judges conduct hearings justly and efficiently when communication barriers exist.

63.003 Applicability. The code governs the delivery of services by foreign language and sign language interpreters working in the courts of the State of Wisconsin. Its purpose is to define the duties of interpreters and thereby enhance the administration of justice and promote public confidence in the

courts. The code also applies to real time reporters when functioning in the capacity of providing access to court users.

63.004 Interpretation. The comments accompanying this code are not adopted. The comments are intended as guides to interpretation, but the text of each rule is authoritative. If a court policy or routine practice appears to conflict with any provision of the code the policy or practice should be reviewed for modification.

63.01 Accuracy and completeness. Interpreters shall render a complete and accurate interpretation or sight translation by reproducing in the target language the closest natural equivalent of the source language message, without altering, omitting, or adding anything to the meaning of what is stated or written, and without explanation.

Comment

Interpreters have a twofold role: (1) to ensure that court proceedings reflect, in English, precisely what was said by persons of limited English proficiency; and (2) to place persons of limited English proficiency on an equal footing with persons who understand English. This creates an obligation to conserve every element of information contained in a source language communication when it is rendered in the target language.

Therefore, interpreters are required to apply their best skills and judgment to preserve, as faithfully as is reasonably possible and without editing, the meaning of what is said, including the style or register of speech, the ambiguities and nuances of the speaker, and the level of language that best conveys the original meaning of the source language. Verbatim, "word for word," or literal oral interpretations are inappropriate when they distort the meaning of what was said in the source language. However, every spoken statement, even if it appears non-responsive, obscene, rambling, or incoherent should be interpreted. This includes apparent misstatements.

Interpreters should not interject any statement or elaboration of their own. If the need arises to explain an interpreting problem, such as a term or phrase with no direct equivalent in the target language or a misunderstanding that only the interpreter can clarify, the interpreter should ask the court's permission to provide an explanation.

Spoken language interpreters should convey the emotional emphasis of the speaker without reenacting or mimicking the speaker's emotions, or dramatic gestures. Sign language interpreters, however, must employ all of the visual cues that the language they are interpreting for requires—including facial expressions, body language, and hand gestures. Judges should ensure that court participants do not confuse these essential elements of the interpreted language with inappropriate interpreter conduct. Any challenge to the interpreter's conduct should be directed to the judge.

The obligation to preserve accuracy includes the interpreter's duty to correct any errors of interpretation discovered during the proceeding. Interpreters should demonstrate their professionalism by objectively analyzing any challenge to their performance.

The ethical responsibility to interpret accurately and completely includes the responsibility of being properly prepared for interpreting assignments. Interpreters are encouraged to obtain documents and other information necessary to familiarize themselves with the nature and purpose of a proceeding. Prior preparation is generally described below, and is especially important when testimony or documents include highly specialized terminology and subject matter.

In order to avoid any impropriety or appearance of impropriety, interpreters should seek leave of the court before conducting any preparation other than the review of public documents in the court file. Courts should in their discretion freely grant such leave in order to assist interpreters to discharge their professional responsibilities.

Preparation might include but is not limited to:

(1) review of public documents in the court file, such as motions and supporting affidavits, witness lists and jury instructions; the criminal complaint, information, and preliminary hearing transcript in a criminal case; and the summons, complaint, and answer in a civil case;

(2) review of documents in the possession of counsel, such as police reports, witness summaries, deposition transcripts, and pre-sentence investigation reports;

(3) contacting previous interpreters involved in the case for information on language use/style;

(4) contacting attorneys involved in the case for additional information on anticipated testimony or exhibits;

(5) anticipating and discussing interpreting issues related to the case with the judge, but only in the presence of counsel unless the court directs otherwise.

63.02 Representation of qualifications. Interpreters shall accurately and completely represent their certifications, training, and experience.

Comment

Acceptance of a case by an interpreter conveys linguistic competency in legal settings. Withdrawing, or being asked to withdraw, after a court proceeding has begun is disruptive and wasteful of scarce public resources. It is therefore essential that interpreters present a complete and truthful account of their training, certifications, and experience prior to appointment so the court can fairly evaluate their qualifications for delivering interpreting services.

63.03 Impartiality and avoidance of conflict of interest. Interpreters shall be impartial and unbiased, and shall refrain from conduct that may give an appearance of bias. Interpreters shall disclose any real or perceived conflict of interest to the judge and the parties.

Comment

Interpreters serve as officers of the court. Their duties in a court proceeding are to serve the court and the public regardless of whether publicly or privately retained.

Interpreters should avoid any conduct or behavior that presents the appearance of favoritism toward anyone. Interpreters should maintain professional relationships with persons using their services, discourage personal dependence on the interpreter, and avoid participation in the proceedings other than as an interpreter.

During the course of the proceedings, interpreters of record should not converse with parties, witnesses, jurors, attorneys, or with friends or relatives of any party, except in the discharge of their official functions. Official functions may include an informal pre-appearance assessment to include the following:

(1) culturally appropriate introductions;

(2) a determination of variety, mode, or level of communication;

(3) a determination of potential conflicts of interest; and

(4) a description of the interpreter's role and function.

Interpreters should strive for professional detachment. Verbal and non-verbal displays of personal attitudes, prejudices, emotions, or opinions must be avoided at all times.

Interpreters shall not solicit or accept any payment, gift, or gratuities in addition to compensation from the court.

Any condition that interferes with the objectivity of an interpreter constitutes a conflict of interest and must be disclosed to the judge. Interpreters should only divulge necessary information when disclosing the conflict of interest. The disclosure shall not include privileged or confidential information. The following circumstances create potential conflicts of interest that must be disclosed:

(1) the interpreter is a friend, associate, or relative of a party, counsel for a party, a witness, or a victim (in a criminal case) involved in the proceedings;

(2) the interpreter or the interpreter's friend, associate, or relative has a financial interest in the subject matter in controversy, a shared financial interest with a party to the proceeding, or any other interest that might be affected by the outcome of the case;

(3) the interpreter has served in an investigative capacity for any party involved in the case;

(4) the interpreter has previously been retained by a law enforcement agency to assist in the preparation of the criminal case at issue;

(5) the interpreter is an attorney in the case at issue;

(6) the interpreter has previously been retained for employment by one of the parties; or

(7) for any other reason, the interpreter's independence of judgment would be compromised in the course of providing services.

The existence of any one of the above-mentioned circumstances must be carefully evaluated by the court, but does not alone disqualify an interpreter from providing services if the interpreter is able to render services objectively. The interpreter should disclose to the court any indication that the recipient of interpreting services views the interpreter as being biased. If an actual or apparent conflict of interest exists, the court must decide whether removal is appropriate based upon the totality of the circumstances.

63.04 Professional demeanor. Interpreters shall conduct themselves in a manner consistent with the dignity of the court.

Comment

Interpreters should know and observe the established protocol, rules, and procedures for delivering interpreting services. When speaking in English, interpreters should speak at a rate and volume that enables them to be heard and understood throughout the courtroom. Interpreters should be as unobtrusive as possible and should not seek to draw inappropriate attention to themselves while performing their professional duties. This includes any time the interpreter is present, even though not actively interpreting.

Interpreters should avoid obstructing the view of anyone involved in the proceedings, but should be appropriately positioned to facilitate communication. Interpreters who use sign language or other visual modes of communication must be positioned so that signs, facial expressions, and whole body movements are visible to the person for whom they are interpreting and be repositioned to accommodate visual access to exhibits as necessary.

Interpreters are encouraged to avoid personal or professional conduct that could discredit the court.

Interpreters should support other interpreters by sharing knowledge and expertise with them to the extent practicable in the interests of the court.

63.05 Confidentiality. Interpreters shall protect the confidentiality of all privileged and other confidential information.

Comment

Interpreters must protect and uphold the confidentiality of all privileged information obtained during the course of their duties. It is especially important that interpreters understand and uphold the attorney-client privilege that requires confidentiality with respect to any communications between attorney and client. This rule also applies to other types of privileged communications. Interpreters must also refrain from repeating or disclosing information obtained by them in the course of their employment that may be relevant to the legal proceeding.

In the event that an interpreter becomes aware of information that indicates probable imminent harm to someone or relates to a crime being committed during the course of the proceedings, the

interpreter should immediately disclose the information to the presiding judge. In an emergency, the interpreter should disclose the information to an appropriate authority.

Interpreters shall never take advantage of knowledge obtained in the performance of duties, or by their access to court records, facilities, or privileges, for their own or another's personal gain.

63.06 Restriction on public comment. Interpreters shall not publicly discuss, report, or offer an opinion concerning a matter in which they are or have been engaged, even when that information is not privileged or required by law to be confidential, except to facilitate training and education.

Comment

Generally, interpreters should not discuss interpreter assignments with anyone other than persons who have a formal duty associated with the case. However, interpreters may share information for training and education purposes, divulging only so much information as is required to accomplish this purpose. Unless so ordered by a court, interpreters must never reveal privileged or confidential information for any purpose, including training and education.

63.07 Scope of practice. Interpreters shall limit themselves to interpreting or translating and shall not give legal or other advice, express personal opinions to persons using their services, or engage in any other activities that may be construed to constitute a service other than interpreting or translating while serving as an interpreter.

Comment

Since interpreters are responsible only for enabling others to communicate, they should limit themselves to the activity of interpreting or translating only, including official functions as described in the commentary to Rule 63.03. Interpreters, however, may be required to initiate communications during a proceeding when they find it necessary to seek direction from the court in performing their duties. Examples of such circumstances include seeking direction for the court when unable to understand or express a word or thought, requesting speakers to adjust their rate of speech, repeat or rephrase something, correcting their own interpreting errors, or notifying the court of reservations about their ability to satisfy an assignment competently. In such instances, interpreters should make it clear that they are speaking for themselves.

Interpreters may convey legal advice from an attorney to a person only while that attorney is giving it. Interpreters should not explain the purpose or contents of forms, services, or otherwise act as counselors or advisors unless they are interpreting for someone who is acting in that official capacity. Interpreters may translate language on a form for a person who is filling out the form, but should not explain the form or its purpose for such a person.

While engaged in the function of interpreting, interpreters should not personally perform official acts that are the official responsibility of other court officials.

63.08 Assessing and reporting impediments to performance. Interpreters shall assess at all times their ability to deliver their services. When interpreters have any reservation about their ability to satisfy an assignment competently, the interpreters shall immediately convey that reservation to the appropriate judicial authority.

Comment

If the communication mode, dialect, or speech of the person of limited English proficiency cannot be readily interpreted, the interpreter should notify the appropriate judicial authority, such as a supervisory interpreter, a judge, or another official with jurisdiction over interpreter matters.

Interpreters should notify the appropriate judicial authority of any circumstances (environmental or physical limitations) that impede the ability to deliver interpreting services adequately. These circumstances may include that the courtroom is not quiet enough for the interpreter to hear or be heard by the person of limited English proficiency, more than one person is speaking at the same time, or the

speaker is speaking too quickly for the interpreter to adequately interpret. Sign language interpreters must make sure that they can both see and convey the full range of visual language elements that are necessary for communication, including facial expressions and body movements, as well as hand gestures.

Interpreters should notify the judge of the need to take periodic breaks in order to maintain mental and physical alertness and prevent interpreter fatigue. Interpreters should inform the court when the use of team interpreting is necessary.

Even competent and experienced interpreters may encounter situations where routine proceedings suddenly involve slang, idiomatic expressions, regional dialect, or technical or specialized terminology unfamiliar to the interpreter such as the unscheduled testimony of an expert witness. When such situations occur, interpreters should request a brief recess in order to familiarize themselves with the subject matter. If familiarity with the terminology requires extensive time or more intensive research, interpreters should inform the judge.

Interpreters should refrain from accepting a case if they believe its language and subject matter is likely to exceed their capacities. Interpreters should also notify the judge if, during the course of a proceeding they conclude that they are unable to perform adequately for any reason.

63.09 Duty to report ethical violations. Interpreters shall report to the proper judicial authority any effort to impede their compliance with any law, any provision of this code, or any other official policy governing court interpreting and translating.

Comment

Because the users of interpreting services frequently misunderstand the proper role of interpreters, they may ask or expect the interpreters to perform duties or engage in activities that run counter to the provisions of the code or other law, rules, regulations, or policies governing court interpreters. It is incumbent upon the interpreters to explain their professional obligations to the user. If, having been apprised of these obligations, the person persists in demanding that the interpreters violate them, the interpreters should turn to a supervisory interpreter, a judge, or another official with jurisdiction over interpreter matters to resolve the situation.

63.10 Professional development. Interpreters shall improve their skills and knowledge and advance the profession through activities such as professional training and education and interaction with colleagues and specialists in related fields.

Comment

Interpreters must improve their interpreting skills and increase their knowledge of the languages they work in professionally, including past and current trends in slang, idiomatic expression, changes in dialect, technical terminology, and social and regional dialects, as well as their applicability within court proceedings.

Interpreters should keep informed of all statutes, rules of court, and policies of the judiciary that govern the performance of their professional duties.

Interpreters should seek to elevate the standards of the profession through participation in workshops, professional meetings, interaction with colleagues, and reading current literature in the field.

OATH FOR INTERPRETERS

I solemnly swear [or affirm] that in all proceedings in the courts of Wisconsin to which I am appointed as an interpreter, I will interpret truly, accurately, completely, and impartially, in accordance with the standards prescribed by law, the code of ethics for court interpreters, and Wisconsin guidelines for court interpreting.

If I am appointed as an interpreter for a juror, I also swear [or affirm] that I will not participate personally in the jury's deliberations, nor make any comment about my personal recollections of the evidence or my opinions about the outcome of this case. I will not disclose or comment upon anything that I hear in jury deliberations unless ordered to do so by the court.

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